

4-7-1. Title.

This chapter is known as the "Livestock Dealers' Act."

Amended by Chapter 383, 2011 General Session

4-7-2. Purpose declaration.

The Legislature finds and declares that the public interest requires regulation of the sale of livestock between the producer and persons who purchase livestock for resale to protect producers from unwarranted hazard and loss in the sale of their livestock.

Amended by Chapter 383, 2011 General Session

4-7-3. Definitions.

As used in this chapter:

(1) "Agent" or "broker" means a person who, on behalf of a dealer, purchaser, or livestock market, as defined in Section 4-30-1, solicits or negotiates the consignment or purchase of livestock.

(2) "Consignor" means a person who ships or delivers livestock to a dealer for handling or sale.

(3) (a) "Dealer" means a person who:

(i) receives livestock from a person for sale on commission; and

(ii) is entrusted with the possession, management, control, or disposal of livestock for the account of that person.

(b) "Dealer" includes a livestock dealer.

(c) "Dealer" includes a person who owns or leases a feedlot.

(4) (a) "Immediate resale" means the resale of livestock within 60 days of purchase.

(b) "Immediate resale" does not include the resale of livestock culled within 60 days that were purchased for feeding or replacement.

(5) "Livestock" means cattle, swine, equines, sheep, camelidae, ratites, bison, and domesticated elk as defined in Section 4-39-102.

(6) "Livestock dealer" means a person engaged in the business of purchasing livestock for immediate resale or interstate shipment for immediate resale.

(7) "Producer" means a person who is primarily engaged in the business of raising livestock for profit.

Amended by Chapter 383, 2011 General Session

4-7-4. Unlawful to act as an agent, broker, or dealer without license -- Exception.

Except as exempted by Section 4-7-5, no person may act as an agent, broker, or dealer in this state without being licensed under this chapter.

Amended by Chapter 25, 1990 General Session

4-7-5. Exemptions.

The surety and licensing requirements of this chapter do not apply to:

- (1) a livestock market that is bonded as required by laws of the United States and Title 4, Chapter 30, Livestock Markets; or
- (2) a cooperative incorporated under the laws of this state or another state, except as to the receipt of livestock from a nonmember producer.

Amended by Chapter 383, 2011 General Session

4-7-6. Licenses -- Applications.

Application for an agent's, broker's, or dealer's license shall be made to the department upon forms prescribed and furnished by the department. The application shall state:

- (1) the applicant's name, principal address in this state, and date of birth;
- (2) the applicant's principal address in any location outside Utah;
- (3) the name and principal address of the person authorized by the applicant to accept service of process in this state on behalf of the applicant during the licensure period;
- (4) the name and principal address of the applicant's surety if the application is for a dealer's license;
- (5) a schedule of the commissions, fees, and other charges the applicant intends to collect for services during the period of licensure;
- (6) the name and address of each principal the applicant intends to represent during the period of licensure; and
- (7) any other information that the department may require by rule.

Amended by Chapter 41, 1995 General Session

4-7-7. Issuance of dealer, broker, and agent licenses -- Fees -- Deposit of bond or trust agreement -- Renewal -- Refusal to issue or renew license.

(1) The commissioner, if satisfied that the convenience and necessity of the industry and the public will be served, shall issue a license to a dealer within 30 days after:

- (a) receipt of a proper application and financial statement;
 - (b) payment of a license fee determined by the department pursuant to Subsection 4-2-2(2); and
 - (c) the posting of a corporate surety bond, an irrevocable letter of credit, a trust fund agreement, or other security required by Section 4-7-8.
- (2) Upon proper application and payment of the license fee determined by the department pursuant to Subsection 4-2-2(2), the commissioner shall issue a license to conduct business as an agent or broker.
- (3) A license issued under this chapter:
- (a) entitles the applicant to conduct the business described in the application through December 31 of the year in which the license is issued, subject to suspension or revocation for cause; and
 - (b) is renewable for a period of one year upon:

- (i) receipt of a proper renewal application; and
- (ii) payment of an annual license renewal fee determined by the department pursuant to Subsection 4-2-2(2).

(4) A license issued under this chapter shall at all times remain the property of the state, and the licensee is entitled to its possession only for the duration of the license.

(5) The department shall refuse to issue or renew a license if the applicant:

- (a) cannot produce a financial statement with sufficient assets to justify the amount of business the applicant contemplates, unless the application is for a broker's or agent's license;

- (b) is in violation of this chapter or rules adopted under this chapter;

- (c) has made a false or misleading statement as to the health or physical condition of livestock in connection with the buying, receiving, selling, exchanging, soliciting or negotiating the sale of, or the weighing of livestock;

- (d) has failed to keep records of purchases and sales or refused to grant inspection of those records by authorized agents of the department;

- (e) has failed to comply with a lawful order of the department;

- (f) has been found by the department to have failed to pay, without reasonable cause, obligations incurred in connection with the livestock transaction;

- (g) has been suspended by order of the Secretary of Agriculture of the United States Department of Agriculture under provisions of the Packers and Stockyards Act, 1921, 7 U.S.C. Sec. 181 et seq.;

- (h) employs a person required to be licensed whose license cannot be renewed or whose license is under suspension or revocation by the department or the United States Department of Agriculture; or

- (i) has any unsatisfied civil judgments related to an activity for which licensing is required by this chapter.

(6) An applicant who has been refused a license or license renewal may not apply again for one year following refusal unless the department determines that the applicant is in compliance with this chapter.

Amended by Chapter 383, 2011 General Session

4-7-8. Applicant for dealer's license to post security -- Increase in amount of security posted -- Action on security authorized -- Duties of commissioner -- Option to require posting new security if action filed -- Effect of failure to post new security -- Commissioner's authority to call bond if not renewed.

(1) (a) Before a license is issued to a dealer, the applicant shall post a corporate surety bond, irrevocable letter of credit, trust fund agreement, or any other security agreement considered reasonable in an amount not less than \$10,000 nor more than \$200,000, as determined by the commissioner or as required by the Packers and Stockyards Act, 1921, 7 U.S.C. Section 181 et seq.

- (b) Any bond shall be written by a surety licensed under the laws of Utah and name the state, as obligee, for the use and benefit of producers.

- (c) The bond or other security posted shall be conditioned upon:

- (i) the faithful performance of contracts and the faithful accounting for and

handling of livestock consigned to the dealer;

(ii) the performance of the obligations imposed under this chapter; and

(iii) the payment of court costs and attorney's fees to the prevailing party incident to any suit upon the bond or other security posted.

(2) (a) The commissioner may require a dealer who is issued a license to increase the amount of the bond or other security posted under Subsection (1)(a) if the commissioner determines the bond or other security posted is inadequate to secure performance of the dealer's obligations.

(b) The commissioner shall notify the Packers and Stockyards Administration of an increase made under Subsection (2)(a).

(c) The commissioner may suspend a dealer's license for failure to comply with Subsection (2)(a) within 10 days after notice is given to the dealer.

(3) A consignor claiming damages, as a result of fraud, deceit, or willful negligence by a dealer or as a result of the dealer's failure to comply with this chapter, may bring an action upon the bond or other security posted for damages against both the principal and surety.

(4) (a) If it is reported to the department by a consignor that a dealer has failed to pay in a timely manner for livestock received for sale, the commissioner shall:

(i) ascertain the name and address of each consignor who is a creditor of the dealer; and

(ii) request a verified written statement setting forth the amount claimed due from the dealer.

(b) Upon receipt of the verified statements, the commissioner shall bring an action upon the bond or other security posted on behalf of the consignors who claim amounts due from the dealer.

(5) (a) If an action is filed upon the bond or other security posted, the commissioner may require the filing of new security.

(b) Immediately upon recovery in the action, the commissioner shall require the dealer to file a new bond or other security.

(c) Failure, in either case, to file the bond or other security within 10 days after demand is cause for suspension of the license until a new bond or other security is filed.

(d) If the bond or other security posted under this section is not renewed within 10 days of its expiration date, unless the commissioner states in writing that this is unnecessary, the commissioner may obtain, after a hearing, the full amount of the bond or other security before it expires.

Amended by Chapter 383, 2011 General Session

4-7-9. Dealers -- Records mandated -- Records subject to inspection.

(1) A dealer who receives livestock for sale or consignment shall promptly record:

(a) the name and address of the consignor;

(b) the date received;

(c) the condition and quantity upon arrival;

(d) the date of sale for account of the producer-consignor;

- (e) the sale price;
 - (f) an itemized statement of the charges to be paid by the producer-consignor;
 - (g) the individual or group identification of the livestock;
 - (h) the nature and amount of any claims the dealer has against third persons for overcharges or damages; and
 - (i) if the dealer has a direct or indirect financial interest in the business of the purchaser, or, if the purchaser has a similar financial interest in the business of the dealer, the name and address of the purchaser.
- (2) (a) The dealer shall provide a copy of the livestock receipt to the producer immediately upon delivery of the product.
- (b) The records required by this section shall be retained for a period of one year following the date of consignment and shall be available during business hours for inspection by the department.
- (c) A consignor involved in a consignment subject to inquiry may inspect relevant records.
- (3) (a) A dealer shall file an annual report of the records required under Subsection (1) with the department on a form prescribed and furnished by the department.
- (b) The dealer shall file the report by April 15 following the end of a calendar year, or if the records are kept on a fiscal year basis, by 90 days after the close of the fiscal year.
- (c) The commissioner may, for good cause shown or by the commissioner's own motion, grant an extension to the filing deadline under Subsection (3)(b).
- (d) For purposes of this Subsection (3), "dealer" does not include a packer buyer registered to purchase livestock for slaughter only.
- (e) The department shall accept reports as required by the Packers and Stockyards Administration for livestock under the Packers and Stockyards Act, 9 C.F.R. Sec. 201.97.
- (f) The reports required under this Subsection (3) may be subject to audit and establish the basis for bond adequacy.

Amended by Chapter 383, 2011 General Session

4-7-10. Livestock purchases.

Livestock purchases shall be paid for as provided in the Packers and Stockyards Act, 1921, 7 U.S.C. Sec. 181, et seq.

Amended by Chapter 383, 2011 General Session

4-7-11. Department authority -- Examination and investigation of transactions -- Notice of agency action upon probable cause -- Settlement of disputes -- Cease and desist order -- Enforcement -- Review.

(1) For the purpose of enforcing this chapter the department may, upon its own motion, or shall, upon the verified complaint of an interested consignor, investigate, examine, or inspect any transaction involving:

- (a) the solicitation, receipt, sale, or attempted sale of livestock by a dealer or

person assuming to act as a dealer;

(b) the failure to make a correct account of sales;

(c) the intentional making of a false statement about market conditions or the condition or quantity of livestock consigned;

(d) the failure to remit payment in a timely manner to the consignor as required by contract or by this chapter;

(e) any other consignment transaction alleged to have resulted in damage to the consignor; or

(f) any dealer or agent with an unsatisfied judgment by a civil court related to an activity for which licensing is required by this chapter.

(2) (a) After investigation upon its own motion, if the department determines that probable cause exists to believe that a dealer has engaged or is engaging in acts that violate this chapter, the department shall issue a notice of agency action.

(b) (i) Upon the receipt of a verified complaint, the department shall undertake to effect a settlement between the consignor and the dealer.

(ii) If a settlement cannot be effected, the department shall treat the verified complaint as a request for agency action.

(3) (a) In a hearing upon a verified complaint, if the commissioner, or hearing officer designated by the commissioner, determines by a preponderance of the evidence that the person complained of has violated this chapter and that the violation has resulted in damage to the complainant, the commissioner or officer shall:

(i) prepare written findings of fact detailing the findings and fixing the amount of damage suffered; and

(ii) order the defendant to pay damages.

(b) In a hearing initiated upon the department's own motion, if the commissioner or hearing officer determines by a preponderance of the evidence that the person complained of by the department has engaged in, or is engaging in, acts that violate this chapter, the commissioner or officer shall prepare written findings of fact and an order requiring the person to cease and desist from the activity.

(4) The department may petition any court having jurisdiction in the county where the action complained of occurred to enforce the department's order.

(5) Any dealer aggrieved by an order issued under this section may obtain judicial review of the order.

(6) (a) The department may not act upon a verified complaint submitted to the department more than six months after the consignor allegedly suffered damage.

(b) A livestock claim shall be made in writing within 120 days from the date of the transaction.

Amended by Chapter 383, 2011 General Session

4-7-12. Sale of livestock -- Prima facie evidence of fraud.

The following constitutes prima facie evidence of fraud in the sale of livestock:

(1) any sale of livestock at less than market price by a dealer to a person with whom the dealer has a financial interest; or

(2) any sale out of which the dealer receives part of the sale price other than the agreed commission or other agreed charges.

Amended by Chapter 383, 2011 General Session

4-7-13. Suspension or revocation -- Grounds -- Notice to producers.

(1) The department may suspend or revoke the license of and suspend or refuse all department services to a person licensed under this chapter if the department finds that the licensee has:

- (a) provided false information when making an application for a license;
- (b) failed to comply with this chapter or rules adopted under this chapter; or
- (c) engaged in any willful conduct that is detrimental to a producer.

(2) If a license is revoked pursuant to a hearing and the decision is final, or an injunction is imposed by a civil court, the department shall, by publication in a newspaper of a general circulation in the area, notify producers of livestock in the area in which the licensee operated that the license has been revoked or a department action has been taken.

Amended by Chapter 383, 2011 General Session

4-7-13.5. Suspension of license -- Opportunity for hearing.

(1) A license may be suspended immediately if:

(a) an emergency exists which presents a clear and present danger to the public health;

(b) an inspection or sampling is refused; or

(c) the licensee's bond has been revoked or cancelled.

(2) The department shall immediately notify the person of the suspension in writing and provide an opportunity for hearing without delay.

Enacted by Chapter 24, 1985 General Session

4-7-14. Prohibited acts.

(1) A person licensed under this chapter may not:

(a) make false charges incident to the sale of livestock;

(b) wilfully fail to comply with the requirements of Section 4-7-9 or 4-7-10;

(c) fail to file a schedule of commissions and charges;

(d) consign livestock without the consent of the producer-consignor for the purpose of charging more than one commission;

(e) make any false statement to the detriment of the producer regarding current market conditions for livestock or about the condition or quantity of the livestock consigned for the account of the producer;

(f) engage in fraud or misrepresentation in the procurement or attempted procurement of a license; or

(g) act as a dealer or agent and, with intent to defraud, make, draw, utter, or deliver any check, draft, or order for the payment of money from any bank or other depository to the owner for the purchase price of livestock, when at the time of the making, drawing, uttering, or delivery the maker or drawer does not have sufficient funds in or credit with the bank or other depository for the payment of the check, draft,

or order in full upon its presentation.

(2) (a) The making, drawing, uttering, or delivery of a check, draft, or order in the circumstances specified in this section shall be evidence of an intent to defraud.

(b) As used in this section, "credit" means an arrangement or understanding with the bank or depository for the payment of the check, draft, or order.

Amended by Chapter 383, 2011 General Session